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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/558,351	11/23/2005	Giorgio E. Curradini	BONNP18	5741
49691	7590	06/25/2007		
IP STRATEGIES 12 1/2 WALL STREET SUITE I ASHEVILLE, NC 28801			EXAMINER STROUD, JONATHAN R	
			ART UNIT 3709	PAPER NUMBER
			MAIL DATE 06/25/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/558,351

**Applicant(s)**

CURRADINI, GIORGIO E.

**Examiner**

Jonathan R. Stroud

**Art Unit**

3709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 1, 3 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 November 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/29/06</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Appendix I and II</u> .                |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 101b and M. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign mentioned in the description: A'. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is

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being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The specification is objected to because of the following informalities:

In paragraph [0023] of the specification, the word "prostatic" is believed to be in error. For -- prosthetic --.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. Claims 1, 3 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The specification and the claims lack a definition of the claim limitation "mixtilinear surface." The Merriam-Webster dictionary gives the following definition for mixtilinear:

mixtilinear - from Mixtilinear (a):

Containing, or consisting of, lines of different kinds, as straight, curved, and the like; as, a mixtilinear angle, that

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is, an angle contained by a straight line and a curve.

The term "mixtilinear surface" does not appear in the prior art, and one of ordinary skill in the art would not be able to modify a surface in a particular way as per this limitation. Applicant is required to provide a definition for this term and amend the specification accordingly.

5. Claim 6 is also rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, for reciting the limitation "said profile" in line 1. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "shape of a half-slot" is indefinite. A slot is defined by the Merriam-Webster dictionary as:

Slot (n):

a: a narrow opening or groove : SLIT, NOTCH <a mail *slot* in a door>

Applicant failed to explain how a "half-slot" differs from a slot as defined above.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 3, 4, 5, 6, 7, 8 and 10 are rejected under 35 U.S.C. 102(b) as anticipated by French patent 2 681 239 to Bascoulergue that teaches the invention as claimed (See appendix I for a diagram of Bascoulergue's figures).

"A femoral stem for hip prosthesis comprising: a main body [Fig. 1, feature 2) with mainly longitudinal development [Fig.'s 1, 2] and with a generally wedge shape [Fig. 2] ... a central body of a generally trapezoidal shape ... [3 in Fig. 1]; an appendix [4 in Fig. 1] projecting from said central body, provided with a terminal pin [5 in Fig. 1]; said main body and said central body being defined by a shaped surface on the medial side [Fig.'s 1, 2, surface 8] and by a mixtilinear surface on the opposite lateral [surface 9 in Fig.'s 1,2], wherein a shaped notch is present in said central body [14 or 15 in Fig. 1, 2, 3], said notch starting from the mixtilinear surface [9 in Fig. 1,2,3] of said main body and extending up to the proximity of the projecting appendix [Fig. 3], said shaped notch passing through the thickness of said central body from the anterior side to the posterior side of the stem [14 or 15 in Fig. ]. ... Wherein said mixtilinear surface consists of a first generally straight surface belonging to said central body [Fig. 3, surface 9 below

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A] and a second generally straight surface belonging to said main body [Fig. 1, surface 9 extending above A], connected to said first surface through a generally convex radiused zone [Fig. 3, surface 9 at Fig. 1, A] from which said shaped notch is starting [notch 14 or 15 in Fig. 3]. ... Wherein the extension of said second surface defines with said first surface an acute angle [1 in Fig. 1, beginning at A] ... wherein said shaped notch divides said central body into a first zone [near the end of notch 14, Fig. 3] arranged generally facing the greater trochanter of said femur and second zone arranged generally facing the lesser trochanter of said femur [near surface 8 at the far end of notch 15 in Fig. 3], said first zone and said second zone being connected to each other through a bridge [area continuous with surface 8] comprised between said shaped notch and the radiused surface between said projecting appendix and said mixtilinear surface ... Wherein said profile consists of a first stretch connected to said mixtilinear surface with a generally constant cross section [area immediately continuous with surface 9, between notches 14 and 15 in Figs. 2 and 3] and a second stretch extending until below said bridge with a widened cross section [Fig. 2; area extending below notches 14 and 15] ... Wherein said first zone of said central body is externally provided with at least a longitudinal fin generally developed for the entire length of said first zone [Between 12 and 13 in Fig. 1, 3] ... Wherein said fin is arranged along a longitudinal axis generally parallel to said first surface of said mixtilinear surface [Fig. 1, 3; The above-defined "fin" is generally parallel to surface 9, defined above as "mixtilinear surface"]. ... And ... wherein said

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shaped surface has a concave-convex profile in longitudinal section [Fig. 1, surface 8].

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bascoulergue in view of Teinturier 5,041,140. Bascoulergue teaches the invention as claimed and as discussed above. However, Bascoulergue does not teach the following claimed limitations taught by Teinturier: the concave-convex profile [Fig. 1]. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bascoulergue in view of Teinturier, in order to increase the implant's elasticity in vivo, as taught by Teinturier, col. 1, ll. 42-54.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bascoulergue in view of EP 0 669 116 (ARTOS MED). Bascoulergue teaches the invention as claimed and discussed above. However, Bascoulergue does not teach the following claimed limitations taught by ARTOS MED: tapering conical fins in a longitudinal orientation. It would have been obvious to one of ordinary skill in the art at the time of invention to modify Bascoulergue in view of ARTOS



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MED, in order to increase the stability and efficacy of the implant in vivo as taught by ARTOS MED on p. 1, ll. 3-9 of the English translation.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see attached Notice of References Cited.

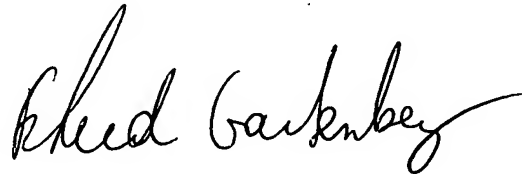
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan R. Stroud, whose telephone number is 571-270-3070. The examiner can normally be reached on Monday through Friday, 7:30 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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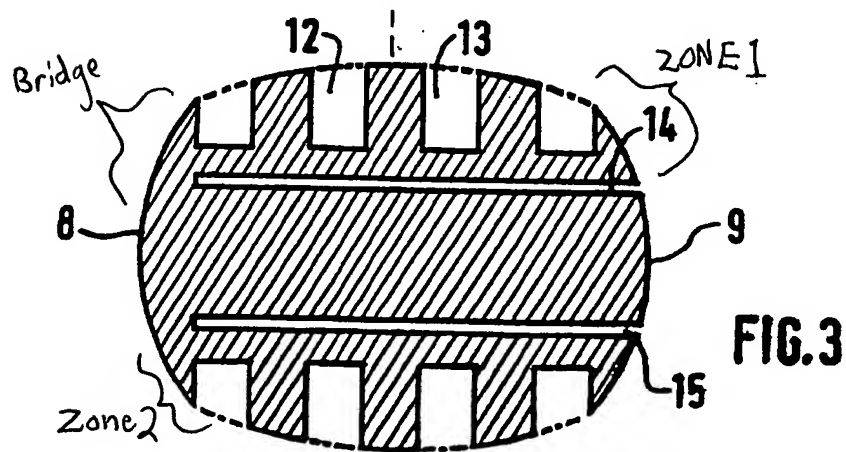
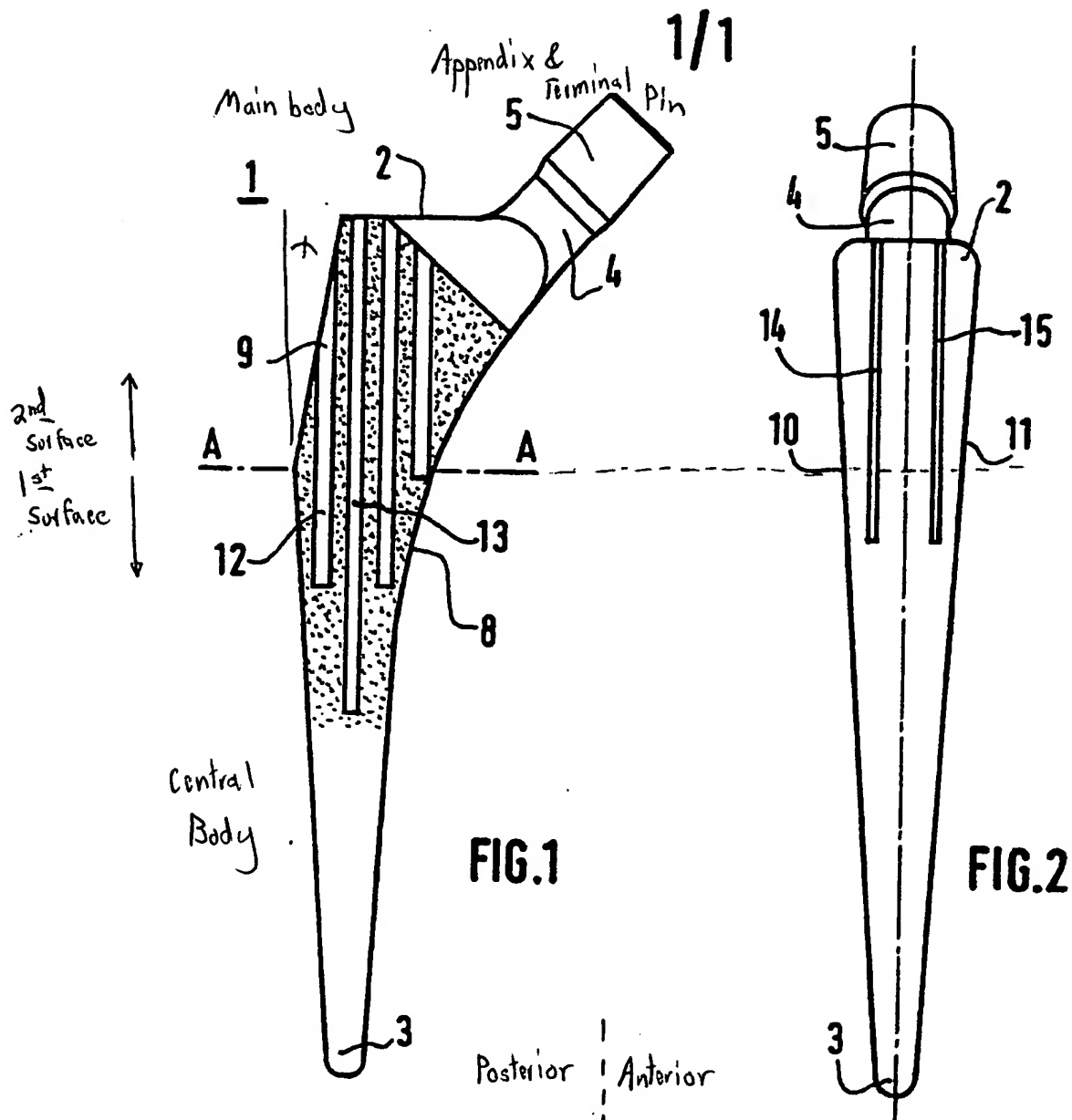
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/Jonathan Stroud/  
Patent Examiner, Art Unit 3709  
Technology Center 3700



**EHUD GARTENBERG**  
**SUPERVISORY PATENT EXAMINER**

5/25/07



*[Handwritten signature]*

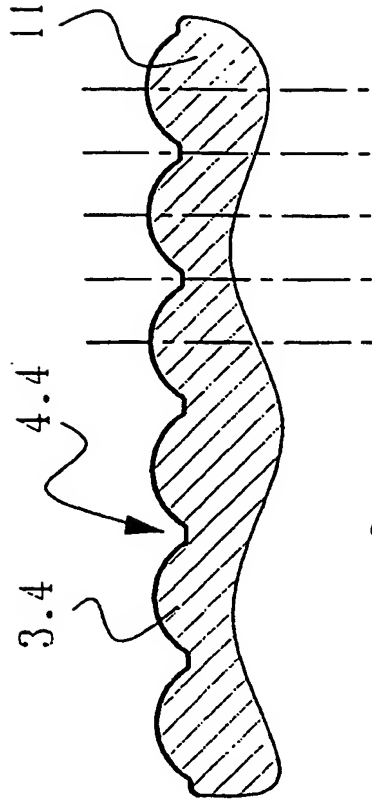


Fig. 9

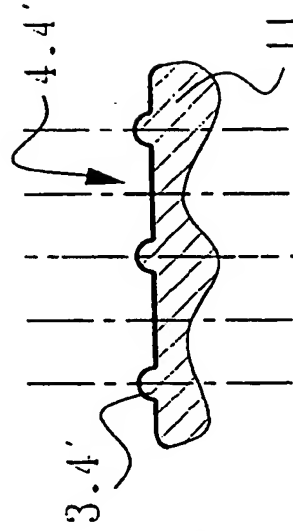


Fig. 9a

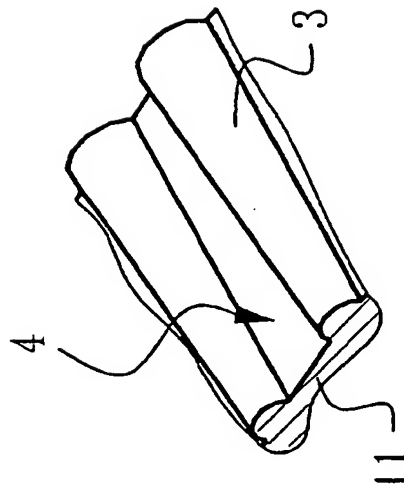


Fig. 9b